

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JUNJI NIWANO, on behalf of himself)	
and others similarly situated,)	
)	Civil Action No. 1:19-cv-00968-MHC
)	
Plaintiff,)	
vs.)	
)	
GLOBAL MANAGEMENT USA, INC.,)	
JS WORLD, LLC, JK PRIME HOUSE,)	
LLC, JAESUNG KIM, JAE KYUNG)	
SON, and DONG C. SON,)	
)	
<u>Defendants.</u>)	

ANSWER OF DONG C. SON

COMES NOW Defendant Dong C. Son, pursuant to Fed. R. Civ. P. 8, and answers the Complaint, respectfully showing the Court as follows:

NATURE OF THIS ACTION

1.

Defendant Son admits only that Plaintiff brings this action pursuant to the Fair Labor Standards Act (“FLSA”) against the named defendants, but denies that Plaintiff is entitled to any relief thereunder or any other relief. Any allegation not specifically admitted herein is denied.

2.

Defendant Son admits only that Plaintiff brings this action pursuant to the FLSA, but denies that Plaintiff is entitled to any relief thereunder or any other relief and denies that there has been any FLSA violation. Any allegation not specifically admitted herein is denied.

3.

Defendant Son admits only that Plaintiff brings this action pursuant to the FLSA, but denies that Plaintiff is entitled to any relief thereunder or any other relief and denies that there has been any FLSA violation. Any allegation not specifically admitted herein is denied.

PARTIES

4.

Defendant Son is currently without sufficient knowledge or information to admit or deny where Plaintiff has resided “during all relevant times.”

5.

As to sentence one of paragraph 5 of the Complaint, Defendant Son is currently without sufficient knowledge or information to admit or deny what an uncited/unreferenced webpage (which Defendant Son does not own) does or does not say. As to sentence two of paragraph 5 of the Complaint, Defendant Son is

currently without sufficient knowledge or information to admit or deny where all the restaurants that the current owners (not Defendant Son) own or operate may be located.

6.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 6 of the Complaint.

7.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 7 of the Complaint. By way of further answer, Defendant Son avers that Jae Kyung Son is a female.

8.

Defendant Son admits only that he can be served at the address listed in Paragraph 8 of the Complaint, that he was a corporate officer of JS World, LLC for a period of time, and that he was a corporate officer of Global Management USA, Inc. and had operational control of Global Management USA, Inc. for a period of time. By way of further answer, Defendant Son avers that Global Management USA, Inc. is dissolved. Any remaining allegation in Paragraph 8 of the Complaint not specifically admitted is hereby denied.

9.

Defendant Son admits only that he can be served at the listed address. By way of further answer, Defendant Son avers that Global Management USA, Inc. is dissolved. Any remaining allegation in Paragraph 9 of the Complaint not specifically admitted is hereby denied.

10.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 10 of the Complaint.

11.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 11 of the Complaint.

12.

The allegations in paragraph 12 of the Complaint are denied as averred.

13.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 13 of the Complaint.

14.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 14 of the Complaint.

15.

The allegations in paragraph 15 of the Complaint are denied as averred.

16.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 16 of the Complaint.

17.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 17 of the Complaint.

18.

Defendant Son admits only that he determined how much Plaintiff was paid while Defendant Son was an owner of the entity that employed Plaintiff, and that Plaintiff was paid by check. Any remaining allegations not specifically admitted herein are denied.

19.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 19 of the Complaint.

20.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 20 of the Complaint.

21.

The allegations in paragraph 21 constitute a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied as averred. By way of further answer, Defendant Son avers that Global Management USA, Inc. is dissolved.

22.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 22 of the Complaint.

23.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 23 of the Complaint.

24.

The allegations in paragraph 24 constitute a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied as averred.

25.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 25 of the Complaint.

26.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 26 of the Complaint.

27.

The allegations in paragraph 27 of the Complaint are denied as averred.

28.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 28 of the Complaint.

29.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 29 of the Complaint.

30.

The allegations in paragraph 30 of the Complaint are denied as averred.

31.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 31 of the Complaint.

32.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 32 of the Complaint.

33.

The allegations in paragraph 33 of the Complaint are denied as averred.

34.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 34 of the Complaint.

35.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 35 of the Complaint.

JURISDICTION

36.

Defendant Son does not contest this Court's subject matter jurisdiction in this case.

VENUE

37.

Defendant Son does not contest this Court has venue in this case.

FACTS

38.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 38 of the Complaint.

39.

Defendant Son admits the allegations in the first two sentences of Paragraph 29 of the Complaint. Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in the last sentence of paragraph 39 of the Complaint. Any allegation not specifically admitted herein is hereby denied.

40.

The allegations in paragraph 40 of the Complaint are denied as averred.

41.

The allegations in paragraph 41 of the Complaint are denied as averred.

42.

The allegations in paragraph 42 of the Complaint are denied as averred.

43.

The allegations in paragraph 43 of the Complaint are denied as averred.

DEFENDANTS' COMPENSATION SCHEME

44.

The allegations in paragraph 44 of the Complaint are denied as averred.

45.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 45 of the Complaint.

46.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 46 of the Complaint.

47.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 47 of the Complaint.

48.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 48 of the Complaint.

49.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 49 of the Complaint.

DEFENDANTS' PAYROLL REPORTING SCHEME

50.

The allegations in paragraph 50 of the Complaint are denied as averred.

51.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 51 of the Complaint.

52.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 52 of the Complaint.

CLAIM FOR RELIEF

COUNT 1: VIOLATION OF FLSA

53.

Defendant Son re-alleges and incorporates by reference each of the foregoing paragraphs of his Answer as if set forth fully herein.

54.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 54 of the Complaint.

55.

The allegations in paragraph 55 constitute a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied as averred.

56.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 56 of the Complaint.

57.

The allegations in paragraph 57 of the Complaint are denied as averred.

58.

The allegations in paragraph 58 of the Complaint are denied as averred.

59.

The allegations in paragraph 59 of the Complaint are denied as averred.

**COUNT II: CIVIL DAMAGES FOR FRAUDULENT FILING OF
INFORMATION RETURNS (26 U.S.C. § 7434)**

60.

Defendant Son re-alleges and incorporates by reference each of the foregoing paragraphs of his Answer as if set forth fully herein.

61.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 61 of the Complaint.

62.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 62 of the Complaint.

63.

Defendant Son is currently without sufficient knowledge or information to

admit or deny the allegations in paragraph 63 of the Complaint.

64.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 64 of the Complaint.

65.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 65 of the Complaint.

66.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 66 of the Complaint.

67.

Defendant Son is currently without sufficient knowledge or information to admit or deny the allegations in paragraph 67 of the Complaint.

68.

The allegations in paragraph 68 of the Complaint are denied as averred.

COLLECTIVE ACTION

69.

Defendant Son admits only that Plaintiff is attempting to bring this as a collective action pursuant to the FLSA, but denies that Plaintiff or anyone else is

entitled to any relief thereunder or any other relief and denies that there has been any FLSA violation. Any allegation not specifically admitted herein is denied.

70.

Defendant Son admits only that Plaintiff is attempting to bring this as a collective action pursuant to the FLSA as he states in paragraph 70 of the Complaint, but denies that Plaintiff or anyone else is entitled to any relief thereunder or any other relief and denies that there has been any FLSA violation. Any allegation not specifically admitted herein is denied.

71.

Any allegation in the Complaint not specifically admitted above is hereby denied.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's claim(s), in whole or in part, fail(s) to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claim fails, in whole or in part, due to release, waiver, and/or estoppel.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claim fails, in whole or in part, due to the unclean hands doctrine.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claim fails, in whole or in part, due to the applicability of one or more FLSA exemptions.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claim fails, in whole or in part, because Defendant Son acted in subjective good faith and had objectively reasonable grounds for believing that the acts and omissions giving rise to the alleged failure to pay overtime did not violate the FLSA.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claim fails, in whole or in part, due to the avoidable consequences doctrine and/or Plaintiff's failure to mitigate his damages.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claim fails, in whole or in part, due to the defenses, protections and limitations of the FLSA, available to Defendant Son, which he hereby invokes.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claim fails, in whole or in part, because Defendant Son did not know or show reckless disregard for whether his conduct was prohibited by the FLSA.

NINTH AFFIRMATIVE DEFENSE

Alternatively, Plaintiff's claim(s) fail(s), in whole or in part, due to Plaintiff's failure or refusal to clock in and out using the company's timekeeping system, for which Defendant Son would have compensated him for all overtime actually worked.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claim fails, in whole or in part, due to the fluctuating workweek doctrine.

ELEVENTH AFFIRMATIVE DEFENSE

Defendant Son reserves the right to assert additional defenses as facts are discovered.

WHEREFORE, having fully answered the Complaint, Defendant Son requests that the Court dismiss the same and enter an order providing Defendant Son with such other relief as the Court deems proper.

Respectfully submitted, this 16th day of April, 2019.

/s/ Nancy B. Pridgen
Nancy B. Pridgen, Esq.
Georgia Bar No. 587949

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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify, on this 16th day of April, 2019, that I filed the foregoing **ANSWER OF DONG C. SON**, using the Court's CM-ECF filing system, which will automatically serve a copy upon all counsel of record, as follows:

Brian G. Kim: brian@leonandkim.com, Brian@briankimpc.com,
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